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06/11/04

JFW DAC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Richard F. Huyser et al.
Serial No.: 10/043,842
Filing Date: 1/10/2002
For: CONTAINER ASSEMBLY FOR MIXING MATERIALS
Attorney Docket No.: 60,210-089

**REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT
(37 CFR § 1.705)**

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicant hereby requests reconsideration of the patent term adjustment indicated in the notice of allowance pursuant to 37 CFR § 1.705(b). The Determination of Patent Term Adjustment under 35 USC 154(b) was mailed with the Notice of Allowance on 3/10/2004 and indicated a patent term adjustment of 135 days. Applicant contends that this determination is incorrect.

The subject Request is being filed no later than the payment of the issue fee and is accompanied by:

- 1) the fee set forth in 37 CFR § 1.18(e); and
- 2) a statement of the facts involved, specifying:

(i) the correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment;

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(ii) the relevant dates as specified in 37 CFR §§ 1.703(a) - (e) for which adjustment is sought and the adjustment as specified in 37 CFR § 1.703(f) to which the patent is entitled;

(iii) whether the patent is subject to a terminal disclaimer; and

(iv) (A) any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude examination of such application as set forth in 37 CFR § 1.704; or

(B) that there were no circumstances constituting a failure to engage in reasonable efforts to conclude examination of such application as set forth in 37 CFR § 1.704.

According to PAIR, the patent term adjustment history calculated a 190 day delay by the U.S. Patent & Trademark Office (USPTO) for failing to mail an action under 35 U.S.C. § 132 within fourteen months of the filing date of the application. This USPTO delay falls under the grounds for adjustment set forth in 37 CFR §1.702(a)(1) and falls under the period of adjustment set forth in 37 CFR §1.703(a)(1). Also according to PAIR, the patent term adjustment history calculated a 55 day delay by the Applicant for failing to reply to the action within three months. This Applicant delay falls under the reduction of period set forth in 37 CFR §§ 1.704(a) and (b). As mentioned above, the patent term adjustment history calculated a total patent term adjustment of 135 days.

Applicant respectfully submits that the USPTO has incorrectly calculated the patent term adjustment. The error relates directly to the date of mailing of the non-final action. The patent term adjustment history states that this date is 9-16-2003. Applicant contends that the mailing date of the action was 11-06-2003. The explanation for this contention is set forth below.

On 9-16-2003 the USPTO mailed an action to Applicant, but the action was NOT for Applicant's patent application. Specifically, the cover sheet for the action listed the Applicant's serial number, but the attached Notice of Allowance was for a different serial number, e.g., a different patent application. Applicant promptly notified the USPTO and corrective action was taken. The USPTO mailed Applicant an Interview Summary setting forth the corrective action, a copy of which is attached. The correct Official Action was mailed on 11-06-2003. The cover sheet of this correct Official Action is also enclosed. The patent term adjustment history on PAIR notes the corrective action and states "11-06-2003 Mail Notice of Restarted Response Period". Hence, the facts are clear that the mailing date of the Official Action is actually 11-06-2003. Unfortunately, the patent term adjustment history does NOT reflect the corrected mailing date of the Action.

Applicant submits that the mailing date for the Official Action should be 11-06-2003. Applicant responded to this Official Action on 2-5-04 and this response was received by the USPTO on 2-9-04. Hence, Applicant's delay should be **reduced** to 3 days (as opposed to 55 days) and the USPTO delay should be **increased** to 242 days (as opposed to 190 days). The total patent term adjustment should be **increased** to equal 239 days (as opposed to 135 days).

As stated above, the grounds for adjustment in this instance (failure to mail an Action with fourteen months) are found in 37 CFR 1.702(a)(1) and the calculation to determine the period of adjustment in this instance (242 days) is found in 37 CFR 1.703(a)(1). As also stated above, the calculation to determine the reduction of the period in this instance (3 days) is found in 37 CFR 1.704 (a) and (b). Further, the calculation to determine the total patent term adjustment in this instance (239 days) is found in 37 CFR 1.703(f).



U.S.S.N 10/043,842

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As a final matter, the patent is NOT subject to a terminal disclaimer and a check in the amount of \$200.00 is enclosed to cover the cost of this Request. Also, the Commissioner is hereby authorized to charge any additional fees or credits to Deposit Account No. 08-2789.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

Dated: June 10, 2004

Samuel J. Haddle, Registration No. 42,619
The Pinehurst Office Center, Suite 101
39400 Woodward Avenue
Bloomfield Hills, MI 48304-5151
(248) 645-1483

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

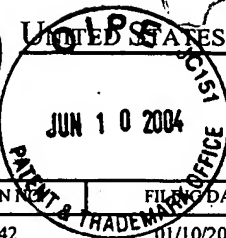
I hereby certify that the attached **Request for Reconsideration Of Patent Term Adjustment (37 CFR § 1.705)**, **return post card**, and a **check for \$200.00** are being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope as "Express Mail Post Office to Addressee", **Mailing Label No. EL 826 405 574 US** and addressed to **Mail Stop Issue Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**, on **June 10, 2004**.

Brenda J. Hughes

✓acd



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,842	01/10/2002	Richard F. Huyser	60,210-053	1140

7590 11/06/2003

WILLIAM H. HONAKER, ESQ.
HOWARD & HOWARD
Suite 101
39400 Woodward Avenue
Bloomfield Hills, MI. 48304-5151

EXAMINER

SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 11/06/2003 ✓



Response due
Feb. 2004

Due: 2/6/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE

U.S. Patent and Trademark Office

Address: COMMISSIONER OF PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO. CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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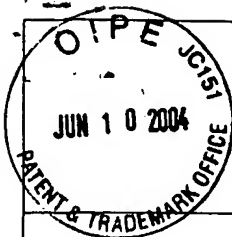
DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Applicant notified OFFICE that cover sheet 10/043,842 was sent with papers from 09/776383. Requests office action of 10/043842 to be-resent. A complete copy of 10/043,842 will be resent. Time will be restarted.

Tony G Soohoo
Primary Examiner
Art Unit: 1723



Interview Summary

Application No.

10/043,842

Applicant(s)

HUYSER ET AL.

Examiner

Tony G Soohoo

Art Unit

1723

All participants (applicant, applicant's representative, PTO personnel):

(1) Tony G Soohoo.

(3) _____.

(2) Brenda Hughes.

(4) _____.

Date of Interview: 23 October 2003.

Type: a) ☐ Telephonic b) ☐ Video Conference

c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.

If Yes, brief description: _____.

Claim(s) discussed: _____.

Identification of prior art discussed: _____.

Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant notified OFFICE that cover sheet 10/043,842 was sent with papers from 09/776383. Requests office action of 10/043842 to be-resent. A complete copy will be resent- time will be restarted.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

TONY G. SOOHO
PRIMARY EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required